IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Barbara Loder Hildebrandt,	)	
	)	
Plaintiff,	)	Case No. 1:02-CV-003
	)	
vs.	)	
	)	
Hyatt Corporation, et al.,	)	
	)	
Defendants.	)	

O R D E R

This matter is before the Court on Plaintiff Barbara Loder Hildebrandt's motion for reconsideration of this Court's prior order imposing costs of $27,751.63 (Doc. No. 169). For the reasons set forth below, Plaintiff's motion is not well-taken and is **DENIED.**

Plaintiff sued her former employer, Defendant Hyatt Corporation, and several individual executives of Hyatt, for age and gender discrimination after she was terminated in a reduction-in-force. The Court dismissed Plaintiff's gender discrimination claims at the summary judgment stage. The case went to trial before a jury on Plaintiff's age discrimination claims. After a seven day trial, the jury deliberated for the equivalent of one day (spread over a two day period) before returning a verdict against Plaintiff on each claim. The Sixth Circuit Court of Appeals affirmed both the Court's order on summary judgment and the jury's verdict in favor of the

Defendants. Hildebrandt v. Hyatt Corp., 154 Fed. Appx. 484 (6th Cir. 2005).

After trial, Defendants filed a motion for a bill of costs pursuant to 28 U.S.C. § 1920 and Rule 54(d) of the Federal Rules of Civil Procedure with the Clerk of Court. Defendants' motion sought an award of $83,765.18 in costs. On January 12, 2006, the Clerk taxed costs to Plaintiff in the amount sought by Defendants. Plaintiff then filed objections (Doc. No. 165) to the Clerk's award. After full briefing on Plaintiff's objections, the Court reduced Defendants' award of costs to $27,751.63. Plaintiff now moves the Court to reconsider that decision.

In her primary memorandum in opposition to the Clerk's award of costs, Plaintiff argued that the Court should not award Defendants any costs because it would be in inequitable under the circumstances of this case. In further support of her objections, Plaintiff argued that the Court should not award Defendants any costs because she filed the lawsuit in good faith, the case was close and difficult, Defendants' costs were unnecessary and unreasonable, and an award of costs would have a chilling effect on other employment discrimination litigants. Plaintiff then objected to individual items awarded by the Clerk.

In determining whether it should deny Defendants recovery of any costs despite the fact that they were the

prevailing parties, the Court relied principally on the Sixth Circuit's decision in Goosetree v. State of Tennessee, 796 F.2d 854 (6th Cir. 1986). The Court stated:

> Rule 54(d)(1) states in pertinent part, "Except when express provision therefor is made either in a statute of the United States or in these rules, costs other than attorney's fees shall be allowed as of course to the prevailing party unless the court otherwise directs." Fed. R. Civ. P.54(d)(1). In Goosetree v. State of Tennessee, 796 F.2d 854 (6th Cir. 1986), the Sixth Circuit interpreted this language as establishing the taxation of costs against the losing party as the normal course of action. Therefore, the burden is placed on the unsuccessful party to demonstrate to the Court that the presumption in favor of awarding costs does not apply and why the Court should exercise its discretion not to award costs. Furthermore, since the language of Rule 54(d)(1) is mandatory, the Court is more limited in its exercise of discretion than it would be if the Rule were discretionary. See id. at 863. The Sixth Circuit has ruled that costs may properly be denied where: 1) taxable expenditures by the prevailing party are unnecessary or unreasonably large; 2) the prevailing party should be penalized for unnecessarily prolonging trial or for injecting unmeritorious issues; or 3) the case is "close and difficult." Id. at 864. The good faith of an unsuccessful litigant is a relevant consideration in Rule 54(d) deliberations, but good faith alone is an insufficient basis for denying costs to a prevailing party. Id.

Doc. No. 167, at 4.

In weighing the Goosetree factors, the Court found that the case was not close and difficult and provided a factual and legal basis for that conclusion. Id. at 5-8. The Court also addressed Plaintiff's contention that the costs were unnecessary and unreasonable, stating, "Although the court may deny unnecessary costs, unnecessary costs are not a reason for denying

all costs." Id. at 8 (quoting White & White, Inc. v. American Hospital Supply Corp., 786 F.2d 728, 732 (6th Cir. 1986)). Based on White & White, the Court concluded that even if some of the costs billed by Defendants were unreasonable or unnecessary that was not a basis for denying all costs. Id. at 8-9. Instead, the Court stated that it would assess the reasonableness of the costs claimed when it addressed Plaintiff's objections to individual items. Id. at 9. The Court then stated that Plaintiff's good faith alone was not a sufficient basis upon which to deny costs in toto. Then, as indicated above, in addressing objections to individual items, the Court reduced the award of costs to $27,751.63.

In her motion for reconsideration, Plaintiff argues that the Court misapprehended Sixth Circuit case law by applying Goosetree. Citing White & White, Plaintiff argues that the Court should have determined whether it was equitable under all of the circumstances of the case to award costs against the losing party. Relying on Haynie v. Ross Gear Div. of TRW, Inc., 799 F.2d 237 (6th Cir. 1986), Plaintiff further argues that the Court cannot award costs against a losing plaintiff unless she brought the case in subjective bad faith, and the action was frivolous, unreasonable, and without foundation.

A motion for reconsideration is not specifically provided for in the Federal Rules of Civil Procedure, but is

often treated as a motion to alter or amend under Rule 59(e). See McDowell v. Dynamics Corp. of Am., 931 F.2d 380, 382 (6th Cir. 1991); Shivers v. Grubbs, 747 F. Supp. 434, 436 (S.D. Ohio 1990). Generally, there are three situations which justify reconsideration under Rule 59(e): "(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; (3) to correct a clear error of law or to prevent manifest injustice." In re Continental Holdings, Inc., 170 B.R. 919, 933 (Bankr. N.D. Ohio 1994). Plaintiff essentially argues that her motion for reconsideration should be granted because the Court made a clear error of law, although it could be read to encompass the manifest injustice prong as well. The Court disagrees with Plaintiff, however, that it should reconsider its prior order awarding costs to Defendants.

Contrary to Plaintiff's argument, there is no divergence between Goosetree and White & White on the standard for determining when to deny costs to the prevailing party under Rule 54. Indeed, the factors cited by the Court in Goosetree are objective factors established by the White & White Court for the trial court to assess in determining when it would be inequitable to award costs to the prevailing party:

> In an early analysis of Rule 54(d), this court stated that the rule was "intended to take care of a situation where, although a litigant was the successful party, it would be inequitable under all the circumstances in the

> case to put the burden of costs upon the losing party." Lichter, 269 F.2d at 146 (emphasis added). We have described several circumstances in which a denial of costs is a proper exercise of discretion under the rule. Such circumstances include cases where taxable expenditures by the prevailing party are "unnecessary or unreasonably large", id., cases where the prevailing party should be penalized for unnecessarily prolonging trial or for injecting unmeritorious issues, National Transformer Corp., 215 F.2d at 362, cases where the prevailing party's recovery is so insignificant that the judgment amounts to a victory for the defendant, Lichter, 269 F.2d at 146, and cases that are "close and difficult". United States Plywood Corp., 370 F.2d at 508.
>
> This court has also identified factors that a district court should ignore when determining whether to exercise its discretion and deny costs. Examples of inappropriate factors include the size of a successful litigant's recovery, Lichter, 269 F.2d at 146, and the ability of the prevailing party to pay his or her costs. Lewis, 400 F.2d at 819. Other courts have identified factors that may be considered but, in the absence of other relevant factors, do not warrant an exercise of discretion under Rule 54(d). An example of a relevant but insufficient basis for denying costs is the good faith a losing party demonstrates in filing, prosecuting or defending an action. Coyne-Delany v. Capital Development Board of Illinois, 717 F.2d 385, 390 (7th Cir. 1983). Another is the propriety with which the losing party conducts the litigation. Delta Air Lines, Inc. v. Colbert, 692 F.2d 489, 490 (7th Cir. 1982).

White & White, 786 F.2d at 730 (emphasis added). As can be seen, had this Court cited White & White instead of Goosetree, it would have reviewed the same set of factors. Thus, Plaintiff's reading of White & White to assert that the Court applied the wrong standard is incomplete at best.

Plaintiff's reliance on Haynie to contend that the Court must find subjective bad faith to award Defendants costs

comes too late because she failed to cite it in her original brief. Essentially, therefore, she has waived reliance on Haynie. In any event, Haynie is not applicable because it addressed an award of attorney's fees to the prevailing defendant pursuant to 42 U.S.C. § 2000e-(5)(k), and not an award of costs under Rule 54(d).

All that remains is Plaintiff's good faith and her contention that an award of fees will chill other potential employment discrimination plaintiffs. Addressing the latter argument first, despite Plaintiff's claims of a chilling effect, the Sixth Circuit continues to indicate that an award of Rule 54 costs to prevailing employers in employment discrimination cases is appropriate. See, e.g., Hunter v. General Motors Corp., 161 Fed. Appx. 502, 503-04 (6th Cir. 2005); Lindsay v. Pizza Hut of Am., Tricon, Inc., 84 Fed. Appx. 582, 582-83 (6th Cir. 2003); Bawle v. Rockwell Int'l Corp., 79 Fed. Appx. 875, 877 (6th Cir. 2003); Bivins v. United States Pipe & Foundry Co., 48 Fed. Appx. 570, 572-73 (6th Cir. 2002). Therefore, the Court does not believe that Plaintiff's claim of a chilling effect can overcome the presumption that Defendants are entitled to recover their costs.

Finally, the Court has never doubted that Plaintiff brought and pursued her claims in good faith. By the same token, however, the jury's verdict establishes that Defendants also

acted in good faith in terminating Plaintiff's employment. In a case that was not close or difficult, the Court does not believe that it is equitable to require an innocent employer to subsidize the cost of unsuccessful employment discrimination litigation despite all of the important and virtuous policies which are furthered by the various anti-discrimination statutes.

Plaintiff has not demonstrated that the Court's first order awarding costs to Defendants was a clear error of law or would result in manifest injustice. Accordingly, Plaintiff's motion for reconsideration is not well-taken and is **DENIED.**

IT IS SO ORDERED

Date October 26, 2006

s/Sandra S. Beckwith
Sandra S. Beckwith, Chief Judge
United States District Court